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OF COUNSEL  
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**CONFIDENTIAL**

September 2, 1998

**BULK FILE**

VIA FEDERAL EXPRESS

Marianne Abely  
Office of General Counsel  
Federal Election Commission  
999 E. Street N.W.  
Washington, D.C. 20463

Re: MUR: 4621

Dear Ms. Abely:

This is in response to your letter of August 4, 1998, in which you request additional information regarding respondents' reporting of expenditures and debts during the 1996 election cycle. Enclosed are invoices and statements related to the dealings between Congressman Merrill Cook ("Cook") and the Merrill Cook for Congress Committee ("Committee") and R.T. Nielson Company ("RTN") and Phillips Twede Spencer ("PTS"). We are submitting this information to you pursuant to the process of conciliation. Thus, the information submitted must be kept confidential.

This letter also responds to your questions regarding the calculation and reporting of expenditures and debt to PTS and RTN during the 1996 election cycle.

This letter will first respond to your questions regarding expenditures and debt to PTS. You first request the methodology utilized to calculate and report expenditures. All expenditures to PTS were reported as of the date of the payment. The full amounts of the expenditures were reported, and the purposes for the payments were recorded with shorthand descriptions. Respondents disclosed expenditures to PTS in their April 15 Quarterly Report; Twelfth Day Report Preceding GOP Convention; Twelfth Day Report Preceding the Primary

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Office of General Counsel  
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Election; July 15 Quarterly Report; October 15 Quarterly Report; 12-Day Pre-Election Report for the General Election; Thirtieth Day Report Following the General Election; January 31, 1997 Year End Report; and July 31, 1997 Mid-Year Report. The method used to determine the amounts paid to PTS was based on invoices from PTS.

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You also request the methodology used to calculate and report financial obligations and debt. The financial obligations and debt to PTS were calculated on a task-by-task basis. The agreement between the Cook campaign and PTS did not set forth a liquidated amount. At times, the financial obligation to PTS could only be precisely calculated after the tasks were completed. In accord with the normal practice associated with media consultants, most payments to PTS were made in advance of the television and radio advertising put together by PTS. The payments were therefore estimates of the amounts actually required for production and running of the media spots. Thus, the actual financial obligations, if any, were not known until after the media spots were produced and run. Respondents reported those expenditures as of the date they occurred. If the Cook campaign was required to pay PTS more, respondents did not know until after the media spots were run.

The debt to PTS was reported as respondents' best estimate. As discussed above, Cook and the Committee had to prepay PTS for media advertising. Often times, Cook and the Committee were entitled to credits for having prepaid more than was necessary. Thus, to arrive at the correct amount owed to PTS, respondents had to deduct the credits to which Cook and the Committee were entitled. For example, in the 12-Day Pre-Election Report for the General Election, dated October 21, 1996, respondents reported a debt of \$10,000 to PTS. While respondents had a statement from PTS showing that \$19,689.18 was owed, respondents knew, and PTS had agreed, that that amount was too high. Respondents knew from conversations with Evan Twede, a principal of PTS, that Cook and the Committee had made advance payments which were higher than required to produce and run media ads, and that Cook and the Committee were entitled to credits that would significantly lower the amount in the statement. Therefore, to accurately report the debt, respondents had to estimate amounts of the credits, and deduct those amounts from the figure in the PTS statement.

Respondents disclosed to the FEC the amount of the debt to PTS. At the end of the election cycle, the Cook campaign owed PTS \$13,006.65. The campaign made a payment to PTS on December 19, 1996 in the amount of

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\$4,012.56, leaving a balance of \$8,994.09. These figures were reported in its January 31, 1997 Year End Report. On January 30, 1997, the Cook campaign and PTS entered into a settlement agreement wherein the campaign agreed to pay PTS the balance of the debt, \$8,994.09. This payment was disclosed in respondents' July 31, 1997 Mid-Year Report.

You also requested similar types of information regarding Cook and the Committee's dealings with RTN. First, you request the methodology used to calculate and report expenditures to RTN. Like the expenditures to PTS, all expenditures to RTN were reported as of the date of the payments. The full amounts of the expenditures were recorded with shorthand descriptions of the purposes for the expenditures. Respondents disclosed expenditures to RTN in the same reports in which they disclosed expenditures to PTS, except for the January 31, 1997 Year End Report and July 31, 1997 Mid-Year Report, because no payments were made during the periods pertinent to those reports.

An explanation of the method used to determine the amounts paid to RTN requires more detail. Throughout the election cycle, RTN sent invoices to Cook and the Committee. Many of them were paid in full. At times, however, RTN requested funds from Cook and the Committee without an invoice. Such funds were paid to RTN, and attributed to an open invoice whether the payment was pursuant to that invoice or not.

In addition, RTN instructed the Cook campaign to ignore several invoices, such as invoice number 96182 for \$150,000, dated July 29, 1996; invoice number 96200 for \$100,000, dated July 29, 1996; and invoice number 96199 for \$50,000, dated July 29, 1996. According to RTN, these invoices did not represent amounts owed by Cook and the Committee.

You also request the methodology used to calculate contractually assumed financial obligations and debt. At first, respondents relied upon Ronald T. Nielson, the owner and operator of respondents' primary campaign consultant and fund raiser, RTN, and respondents' campaign manager. Cook and respondents vested trust and reliance in Mr. Nielson and his company. Given the confusing nature of RTN's billings and RTN's instructions to ignore certain invoices, respondents asked Mr. Nielson what respondents should report as debt to RTN. Mr. Nielson told respondents that he would submit the debt owed to RTN at the end of the campaign. In essence then, Mr. Nielson stated that the campaign had no debt to RTN until he provided such amount at the end of the campaign.

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At the end of the campaign, Mr. Nielson submitted a figure representing what he said was the debt to RTN. Such figure was \$37,441.66. Respondents relied on Mr. Nielson's figure and assumed that was Cook and the Committee's indebtedness to RTN.

In a subsequent letter to the Committee's treasurer, dated January 16, 1997, Mr. Nielson informed respondents that RTN was claiming a much higher amount, \$173,132.87. This figure became a disputed amount.<sup>1</sup> In essence, the dispute between RTN and Cook and the Committee revolves around invoices RTN instructed Cook and the Committee to ignore.

Finally, you request the methodology used to report the debt to RTN. At first, debt to RTN was reported using the number provided by Mr. Nielson. As discussed above, due to the confusing state of RTN's billings, respondents relied on Mr. Nielson to supply the figure they should report as debt to RTN. Mr. Nielson said that he would provide such a figure at the end of the campaign. When he did, respondents reported that amount, \$37,441.66, in their December 4, 1996 report for the period of October 17, 1996 to November 25, 1996. Later, when Mr. Nielson informed respondents that RTN was claiming a much higher amount, respondents disclosed that amount in an amended 30-day Post Election Report dated January 16, 1997, along with the amount they thought was owed. Since then respondents have disclosed the disputed debt in their FEC reports.

In its Factual and Legal Analysis, the FEC stated that respondents should have reported, either as an expenditure or as a debt, two months of consulting fees, or \$8,000, and a \$5,000 bonus that became owed after the Republican Convention on May 4, 1996. Respondents did report such amounts. In their 12-Day Report Preceding the Primary Election, respondents reported a \$27,000 expenditure and three \$8,333 expenditures to RTN. The \$27,000 expenditure included the \$5,000 bonus, and the \$8,333 expenditures included the \$4,000 per month consulting fees.

The FEC also stated that respondents should have reported a \$25,000 general election win bonus after the general election. The \$25,000 bonus was included in the \$37,441.66 figure.

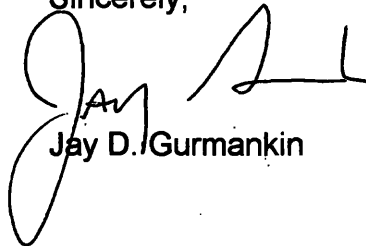
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<sup>1</sup> It is the position of Cook and the Committee that RTN actually owes Cook and the Committee money.

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I hope this letter and the enclosures provide the information you require. Once you have had a chance to review these materials, respondents would like to arrange a meeting to further pursue the process of conciliation.

Sincerely,



Jay D. Gurmankin

CRH/mjg  
Enclosures

cc: Avis Lewis  
Janet Jenson

2023-504-405-2202

## Services AGREEMENT

THIS AGREEMENT is made and entered into by and between R.T. Nielson Company ("Nielson"), and Merrill Cook both personally and the Merrill Cook for Congress Campaign, ("Client").

WHEREAS, Nielson is in the business of providing general consulting, fund raising, advertising and polling services and desires to be retained by Client; and

WHEREAS, Client desires to retain the services of Nielson for the purposes of providing general consulting, fund raising, advertising and polling services.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term of Retainment. Retainment shall commence on the date of this Agreement. All provisions of this Agreement, may be terminated by either party upon giving fourteen (14) days written notice, and subject to the provisions of §§ 4, 5 and 9 set forth below.

2. Duties of Nielson. In accepting retainment by Client, Nielson shall undertake and assume the responsibility of performing for and on behalf of Client all duties and responsibilities which are reasonably necessary to fulfill the purposes of this Agreement as set forth above.

In particular, Nielson shall oversee all general consulting for the campaign. This shall include campaign planning and strategy, convention management, delegate stacking and targeting, and other duties involved with general consulting. Nielson shall be required to oversee and administer all PAC fund raising activities. In addition Nielson shall provide polling, and advertising as required and needed by Client.

The provisions of this Agreement do not in any way preclude Nielson from receiving compensation or consideration from other sources or from engaging in similar type work for other clients or entities not in direct conflict with Client.

3. Duties of Client. Client covenants and agrees that he will comply with all reasonable demands or requests of Nielson to cooperate in the efforts employed by Nielson. This includes, but is not limited to, providing documents and information at the request of Nielson.

Client further covenants and agrees that Nielson is entitled to oversee and conduct all PAC fund raising, consulting, polling and advertising and that Client will not conduct any of these activities without first consulting with Nielson and will not in any way interfere with Nielson's efforts.

Client further agrees that it will be responsible for maintaining all campaign bank accounts and preparation of all state filing reports.

21-04-405-2203

4. Consideration from Client. Client shall pay Nielson the following consideration on a monthly basis:

(a) Fund Raising. Nielson shall receive 15 % of the gross amount of all PAC monies received, regardless of the source. This agreement to perform PAC fund raising shall extend for a period of four months after the general election date.

(b) General Consulting. Nielson shall receive the sum of \$40,000 for consulting services through May 4, 1996. After May 4, 1996 and during the periods of the primary and general elections Nielson shall receive \$4,000 a month for general consulting. Additional services and fees may be negotiated and agreed to at a latter date.

(c) Polling. During the period of the convention Client agrees to pay Nielson .91 for 10,000 plus GOTV calls, and \$8.50 per contact for a delegate identification survey and \$6.00 per contact for two short delegate surveys. Additional services and fees may be agreed to between client and Nielson.

(d) Other Services. Compensation paid to Nielson for services of advertising and shall be agreed to in good faith by Client and Nielson.

(e) Bonus. Client agrees to pay Nielson the following bonuses upon successful election at the following events: \$5,000 Utah Republican Convention Second congressional district race first or second place win May, 1996; \$5,000 Utah Republican primary second congressional district race June, 1996, or whenever party nomination occurs; \$25,000 Utah general election second district race November, 1996.

5. Consideration upon Termination. If this Agreement is terminated by either party, Nielson shall still be entitled to one hundred percent (100%) of the agreed upon consideration up to and including the date of termination.

6. Working Facilities and Expenses. Nielson shall have full access to all campaign office facilities, staff, materials and equipment at no charge to Nielson. Any and all expenses associated with Nielson's duties under this Agreement, including, but not limited to, travel, mailings, telephone charges, long distance telephone calls and photocopies, shall be paid by Client and Nielson shall not be liable for any of these expenses. In addition, Client shall reimburse Nielson for any reasonable expenses incurred by Nielson, which otherwise should be paid by Client. Reimbursement for expenses shall not reduce the consideration paid to Nielson as set forth above.

7. Indemnification. Client agrees to indemnify Nielson and to hold Nielson harmless for any and all expenses incurred by Nielson in furtherance of the purposes of this Agreement. In addition, Client shall pay any and all reasonable attorney's fees incurred by Nielson to defend against any lawsuits or claims made for services rendered in connection with Nielson's duties under this Agreement and shall hold Nielson harmless and indemnify Nielson against any judgments entered against Nielson for any claim whatsoever arising out of Nielson's services rendered under this Agreement.

8. Limitation of Liability. Nielson's liability on any claim of any kind brought by client, whether based on negligence, warranty or otherwise, for any loss or damage arising out of, connected with or resulting from this Agreement or from the performance or breach thereof or from the use of any services furnished pursuant to this Agreement shall in no case exceed the price allocated to the service or material which gives rise to the claim. In no event shall Nielson be liable for special, incidental or consequential damages.

9. Non-Disclosure. During or at any time after termination of retainment hereunder, Client will not, without express written authorization of Nielson, disclose to or use for the benefit of any person, corporation or other entity any files, trade secrets or other confidential information concerning the business, clients, methods, operations, financing or services of Nielson. "Trade secrets" or "confidential information" shall mean information not generally known in the community as disclosed to Client or known by it as the consequence of its retainment of Nielson, whether or not pursuant to this Agreement, regardless of whether or not Client aided and/or was solely responsible for the gathering or compilation of this information or methods.

In addition, Client agrees that any and all market research studies, polls or polling results provided by Nielson shall remain the sole property of Nielson and Client shall not sell to any third parties, disclose to any third parties or otherwise use the results of any such market research studies or polls without the express written authorization of Nielson. The results of market research studies or polls conducted by Nielson are for the exclusive use of Client and not for the use of third parties. This paragraph, however, shall not be construed so as to prohibit Client from publishing in any newspaper or other media source the summary results of any such market research study or poll.

10. Injunctive Relief. Client recognizes that irreparable damage will result to Nielson if Client fails or refuses to perform any obligations under this Agreement, and that the remedy at law for any such failure or refusal will be inadequate. Accordingly, in addition to any other remedies and damages available, Nielson shall be entitled to injunctive relief, and Client may be specifically compelled to perform his obligations under this Agreement.

11. Burden and Benefit. This Agreement shall be binding upon, and shall inure to the benefit of Nielson and Client, and their respective heirs, personal and legal representatives, successors and assigns.

12. Severability. The invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity and enforceability of the other provisions.

13. Governing Law. The construction and interpretation of this Agreement shall be governed by the laws of the State of Utah.

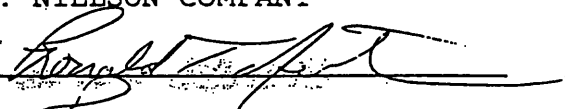
14. Attorneys Fees. The prevailing party to any litigation brought to enforce any provision of this Agreement shall be awarded its costs and attorneys fees.



15. Entire Agreement. This Agreement contains the entire agreement and understanding by and between Nielson and Client with respect to the retainment of Nielson, and no representations, promises, agreements or understandings, either written or oral, not contained herein shall be of any force or effect. No change or modification of this Agreement shall be valid or binding unless it is in writing and signed by the party intended to be bound. No waiver of any provision of this Agreement at any time shall be deemed a waiver of any other provision of this Agreement at such time or at any other time.

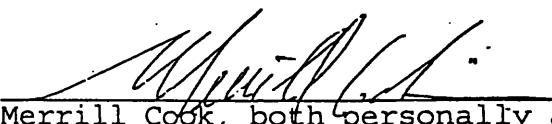
R.T. NIELSON COMPANY

Date: MARCH 5, 1996

By: 

Its: 

Date: 3/5/96

  
Merrill Cook, both personally and as  
a Representative of the Merrill Cook  
for Congress Committee